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Paper No. 7

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**MAR 3 0 2004**

**OFFICE OF PETITIONS**

**ON PETITION**

In re Application of  
Michael John Cullen  
Application No. 09/683,680  
Filed: February 1, 2002  
Attorney's Docket No. 200-1527

This is a decision on the petition filed March 12, 2004, under 37 CFR 1.181 to withdraw the holding of abandonment.

The petition is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within **TWO (2) MONTHS** from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.181," or, as explained in more detail below, "...under 37 CFR 1.137(a) or (b). This is not a final agency decision.

The instant application became abandoned on April 13, 2002, for failure to timely reply to the Notice to File Corrected Application Papers, mailed April 12, 2002, which set a two (2) month shortened statutory period for reply. No extensions of the time for reply in accordance with 37 CFR 1.136(a) were obtained. Accordingly, a Notice of Abandonment was mailed February 18, 2004.

Petitioner claims that a timely reply was filed and provides a 37 CFR 1.8 Certificate of Mail dated March 28, 2002 and a copy of the post card receipt date stamped by the PTO on April 8, 2002. Petitioner's claim is that the response in the form of a properly signed oath and declaration was filed but that corrected drawing were not filed because they had been filed previously, electronically, with the rest of the specification, upon application.

A review of USPTO records reveals that drawings were in fact filed on February 1, 2002 upon application and that a response, in the form of an oath or declaration, was in fact filed on March 28, 2002 (certificate of mail date). However, the Notice mailed on February 12, 2002 was not a Notice to File Missing Parts but instead was a Notice to File Corrected Application Papers. That Notice required the timely submission of Substitute Drawings pursuant to 37 CFR 1.84 because the drawings submitted upon application were filed electronically and drawings so submitted are not electronically reproducible.

Since substitute drawings were not timely filed, in response to the Notice to File Corrected Application Papers, the application was therefore properly abandoned.

The filing of substitute drawings on March 12, 2004 with the instant petition is hereby acknowledged, however, the showing of record is insufficient to warrant withdrawal of the holding of abandonment.

#### ALTERNATE VENUE

Petitioners may wish to present the reply as part of a grantable petition under 37 CFR 1.137(b). Section 1.137(b) now provides that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). A grantable petition pursuant to 37 CFR 1.137(b) must be accompanied by:

- (1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof;
- (2) the petition fee as set forth in 37 CFR 1.17(m) (\$1,330.00);
- (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and
- (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c)).

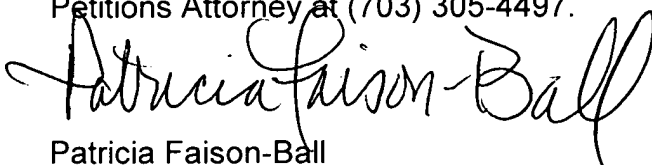
The filing of a petition under the unintentional standard cannot be intentionally delayed and therefore should be filed promptly. A person seeking revival due to unintentional delay cannot make a statement that the delay was unintentional unless the entire delay, including the delay from the date it was discovered that the application was abandoned until the filing of the petition to revive under 37 CFR 1.137(b), was unintentional. A statement that the delay was unintentional is not appropriate if petitioner intentionally delayed the filing of a petition for revival under 37 CFR 1.137(b).

Further correspondence with respect to this matter should be addressed as follows:

By mail:      Mail Stop Petition  
                 Commissioner for Patents  
                 P.O. Box 1450  
                 Alexandria, VA 22313-1450

By FAX:      (703) 872-9306

Telephone inquiries concerning this matter may be directed to the undersigned Petitions Attorney at (703) 305-4497.



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